

REMARKS

Claims 1, 2 and 5-65 were pending in this matter on the date of the Office Action. Claims 1, 2, 5-10, 20-27, 47, and 48 stand rejected under 35 U.S.C. § 102(e) as being anticipated by or under 35 U.S.C. § 103(a) as obvious over Alt DE19834956 (hereinafter "Alt"). Claims 11-19, 28-46 and 49-56 stand rejected as being as being unpatentable under 35 U.S.C. § 103(a) over Alt in view of Hoefer DE19840645 (hereinafter "Hoefer"). Claim 57-64 stand rejected as being unpatentable under 35 U.S.C. § 103(a) over Alt in view of Hoefer and further in view of Kveen US 6,261,319 (hereinafter "Kveen"). Claim 65 stands rejected as being as being unpatentable under 35 U.S.C. § 103(a) over Alt in view of Kveen. The Examiner also stated that claim 7 is a duplicate of claim 5 and should be cancelled. By this amendment, claim 7 and claims 8, 11, 14, 19, 22, 25, 28, 33, 36, 41, 44, 51, 54, 59, and 62, which depend either directly or indirectly from claim 7, are cancelled without prejudice or disclaimer. No claims are amended. An interview was conducted between the undersigned attorney and Examiner Michael Thaler on 2 May 2005.

Interview summary

The undersigned attorney wishes to thank the Examiner for the courtesies extended during the interview of 2 May 2005. During that interview, attention was mainly directed to claim 1 and the nature of the limitation, "...characterised in that all of the first and second bar element portions of the first annular support portion extend in the longitudinal direction of the stent curvedly in an identical concave or convex arcuate manner." The undersigned attorney maintained that the bar elements of Alt do not extend in the longitudinal direction in an identical manner, i.e., that for each "V-shaped" element of Alt, one of the bar elements extends further longitudinally in one direction and the second extends further longitudinally in the opposite direction. Agreement was not reached. It should be noted that the Interview Summary (Form PTOL-413) provided by the Examiner at the conclusion of the interview incorrectly has "x" in box "a," indicating a telephonic interview took place. The interview was personal.

Argument

In the interview of 2 May 2005, the Examiner indicated that the bar element portions of Alt could be considered to be entirely convex or concave in an identical manner. However, review of the Figures of Alt in light of the description of the equivalent Figures in U.S. Pat. No. 6,398,805 (which the Examiner stated in the outstanding Office Action was equivalent to Alt DE19834956), reveals that Alt does not anticipate the present invention or make it obvious.

To anticipate a claim, a reference must teach all elements of the claim (MPEP § 2131). Claim 1 recites, "...all of the first and second bar element portions of the first annular support portion extend in the longitudinal direction of the stent curvedly in an identical concave or convex arcuate manner..." This element of claim 1 is neither taught nor suggested by Alt. As indicated by the US equivalent of Alt (US 6,398,805, hereinafter "the '805 patent"), the stent of Alt has a "multiplicity of openings through the wall of the tube" which are defined by "a network of tangentially interconnected, solely curvilinear struts." These struts extend end to end through the strut with "repetitively alternating crests and valleys..." ('805, Column 4, lines 17-23). Significantly, the '805 patent indicates, "Each of the openings is bounded circumferentially on the tube by an upper curve and a lower curve connected to form a closed curve. *One of these upper and lower curves has a tighter curvature than the other.*" ('805, Column 4, lines 24-27, emphasis added). This arrangement is provided in more detail with reference to Fig. 2, where "an opening in any given row 25" ("annular portion" in the terminology of the present application) is formed by "higher and lower crests 26, 27, respectively " which intersect at least at one side (30) and preferably at both sides (30, 31) of the crests. ('805, Column 6, lines 35-41). The arrangement provides openings that are described as being in the shape of "a ram's head" or "a handlebar moustache or a Dutch winged cap" ('805, Column 4, lines 29-34), and not the highly symmetrical arrangement of bar element portions of the present invention. It is clear that the struts that bound each opening of the '805 patent, and also therefore, of Alt, have a differing curvature, thereby providing the higher and lower crests. This demonstrates that the equivalent structures of Alt to the first and second bar element portions that adjoin at a turning point (i.e. "struts" as recited in the '805 patent) that constitute each annular portion (or "row" as recited in the '805 patent) have differing curvatures, and do not "extend in the longitudinal direction of the stent curvedly in an identical concave or convex arcuate manner" as recited by claim 1.

Futhermore, there is no suggestion in Alt of such an arrangement of identically curved bar element portions. To the contrary, the '805 patent (and therefore also, Alt) provides, "these openings render the sidewall flexible for bending easily around curves in the wall of the vessel as the stent is being inserted into the vascular system." ('805, Column 8, lines 13-15.) No alternate arrangement, such as that provided by the present invention is suggested.

Therefore, the Applicants maintain that the present invention, as recited in claim 1, is neither taught nor suggested by Alt and that claim 1 patentably distinguishes over claim 1.

Likewise, the Applicants maintain that claims 2, 5, 6, 9, 10, 12, 13, 15-18, 20, 21, 23, 24, 26, 27, 29, 30, 47, and 48, which depend from and contain all the limitations of claim 1, also patentably distinguish over Alt. Withdrawal of the rejection of claims 1, 2, 5, 6, 9, 10, 20, 21, 23, 24, 26, 27, 47 and 48 under 35 U.S.C. § 102(e) as being anticipated by or under 35 U.S.C. § 103(a) as obvious over Alt DE19834956 is respectfully requested.

Similarly, the present invention is not taught or suggested by Hoefer, which the Examiner has combined with Alt, to reject claims 11-19, 28-46 and 49-56 under 35 U.S.C. § 103(a). To establish a prima facie case of obviousness, three requirements must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. There must also be a reasonable expectation of success and the prior art reference or references must teach or suggest all of the claim limitations. (MPEP § 2143.) The Applicants maintain that these requirements have not been met.

The invention of Hoefer, as described by U.S. Pat. No. 6,602,285 (hereinafter “the ‘285 patent”), which is believed to be the U.S. equivalent of Hoefer (DE19840645), provides a stent that comprises a web structure of neighboring web patterns. These web patterns comprise adjoining webs and each web comprises three portions (‘285, abstract). Such an arrangement can not be said to teach or suggest bar element portions that are entirely concave over their entire length or entirely convex over their entire length, because they are a series of pieces not a single curved piece and the ‘285 patent provides no requirement that any of the pieces be curved. In fact, the ‘285 patent provides that a preferred embodiment contains web portions that are straight with obtuse angles being formed at the junctions of the portions (column 1, lines 56-60). Therefore, the ‘285 patent (and therefore also Hoefer) actually teaches away from a stent containing bar element portions that extend in the longitudinal direction curvedly, and neither Alt nor Hoefer teach or suggest all of the elements of claim 12, namely, first and second bar element portions that adjoin at a turning point and that extend in the longitudinal direction of the stent curvedly in an identical concave or convex arcuate manner.

Additionally, the Examiner maintains that Hoefer’s arrangement “has the apparent advantage of increasing its flexibility of the stent in various directions.” The Applicants maintain that an “apparent” advantage is insufficient under 35 U.S.C. § 103(a) to establish sufficient motivation, with a reasonable expectation of success, to combine the teachings of Alt

and Hoefer to arrive at the present invention. It is further respectfully maintained that the Examiner is impermissibly using hindsight to combine the elements of these references to arrive at the present invention. Therefore claims 12, 13, 15-18, 29-32, 34, 35, 37-40, 42, 43, 45, 46, 49, 50, 52, 53, 55 and 56 patentably distinguish over Alt and Hoefer, either alone or in combination.

Claims 57, 58, 60, 61, 63 and 64 patentably distinguish over Alt, Hoefer and Kveen, alone or in combination, because none of these references teach or suggest first and second bar element portions that adjoin at a turning point and that extend in the longitudinal direction of the stent curvedly in an identical concave or convex arcuate manner and because the Examiner has not established a reasonable expectation of success in combining the teachings of these references as discussed above. Also for these reasons, claim 65 patentably distinguishes over Alt and Kveen.

Accordingly, the Applicants respectfully request reconsideration of the previous rejections and earnestly solicit the issuance of a Notice of Allowance. A check in the amount of \$1,810.00 is enclosed herewith in satisfaction of the fee for the filing of a Request for Continued Examination (37 C.F.R. 1.17(e)) and the fee for an extension of time of three months (37 C.F.R. 1.17(a)). No other fees are believed to be due with the filing of this response. However, in the event that a fee for the filing of his response is insufficient, the Commissioner is authorized to charge any fee deficiency or to credit any overpayment to Deposit Account 15-0450.

Respectfully submitted,



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